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COACHELLA VALLEY WATER DISTRICT

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

COACHELLA VALLEY WATER DISTRICT Plaintiff, v. DOXO, INC., a business entity and Does 1-10, Inclusive, Defendants	Civil Action No. 5:17-cv-530 **COMPLAINT FOR:** **1. Federal Trademark Infringement;** **2. Federal Trademark Dilution;** **3. Federal Unfair Competition; and** **4. Common Law Unfair Competition**

Plaintiff, Coachella Valley Water District alleges the following against Defendants doxo, Inc., a corporation, and Does 1-10, Inclusive (collectively the "Defendants"):

THE PARTIES

1. Plaintiff Coachella Valley Water District ("CVWD" or "Plaintiff") is a special district established by the state legislature and certified by California state officials on January 16, 1918. CVWD is a government agency located within Riverside County, California. CVWD provides water service to the public for a fee and bills the customers. CVWD provides a bill paying service on its Internet Web site.

2. Defendant doxo, Inc. ("Doxo") is a Seattle corporation not qualified to do business in California with its principal place of business located at 815 1st Avenue, Seattle, WA 98104.

3. The true names and capacities of Defendants sued herein as Does 1-10, inclusive, are unknown to the Plaintiff and therefore the Plaintiff sues them by such fictitious names. When the true names and capacities of these Defendants have been ascertained, the Plaintiff will seek leave of court to amend this Complaint to insert in lieu of such fictitious names the true names and capacities of the fictitiously-named Defendants. The Plaintiff is informed and believes, and thereon alleges, that the Defendants participated in, and in some part, or entirely, are responsible for the illegal acts alleged herein.

4. Whenever reference in this Complaint is made to any acts of Defendants, such allegation shall mean that each of the Defendants acted individually and jointly with the other Defendants named in that cause of action.

JURISDICTION AND VENUE

5. This is an action for pecuniary and injunctive relief from violations of the Lanham Act, arising under the laws of the United States, and for pecuniary and

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injunctive relief for common law unfair competition and trademark violations under California Law.

6. This Court has jurisdiction over the subject matter of this action as provided for in 28 U.S.C. §§ 1331, 1338; and 15 U.S.C. § 1121. This Court also has jurisdiction under the doctrine of supplemental jurisdiction under 28 U.S.C. § 1367.

7. doxo is subject to personal jurisdiction in this court because minimum contacts exist between doxo and California and the activities of doxo in California that give rise to this suit, as alleged in this Complaint, are continuous and systematic.

8. This court also has jurisdiction over doxo because it is not qualified to do business in California and it transacts intrastate business in California (Cal. Corp. Code § 191), as alleged in this Complaint. Therefore doxo is deemed by law to have consented to the jurisdiction of the courts of California in any civil action arising in this state in which the corporation is named as a defendant. (Cal. Corp. Code § 2203(a)).

9. Furthermore doxo was served with a cease and desist letter regarding the acts complained of in the Complaint. While Defendants did remove the logo of CVWD from the offending Internet Web site, which was one of the demands in the cease and desist letter, Defendants have otherwise failed and refused to cease and desist their unlawful actions, and as a result are intentionally engaging in continuing acts aimed at and causing harm in the forum state of the Plaintiff. Such confers personal jurisdiction as a matter of law. *See, Wash. Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 678 (9th Cir. Wash. 2012).

10. Venue is proper in this court under 28 U.S. C. § 1391 because a substantial portion of the wrongdoing alleged in this Complaint takes place in Riverside County, California.

FACTUAL BACKGROUND

11. CVWD has common law trademark rights in its name "Coachella Valley Water District." CVWD conducts the business of providing water service to the public and uses the name "Coachella Valley Water District" as a service mark in connection therewith and in connection with a bill paying service for its customers. Plaintiff has been continuously using the name "Coachella Valley Water District" as a service mark in connection with providing water service to the public for nearly 100 years. The mark is unregistered.

12. Defendants have created and operate an Internet Web site that prominently features CVWD's "Coachella Valley Water District" service mark. Defendants' Internet Web site is presented in a manner that makes it appear that it is a Web site of the Plaintiff, or that it is a Web site that is endorsed by, or affiliated with, the Plaintiff. The Defendants' Web site initially and additionally featured the logo of CVWD, but the logo was removed after Defendants' receipt of the cease and desist letter sent by Plaintiff. The remainder of the cease and desist demands have not been complied with however.

13. Defendants maintain an Internet Web site where customers of CVWD can pay their monthly water bill owing to the Plaintiff. The Plaintiff also has its own bill paying Web page where customers of CVWD can pay their monthly water bill owing to the Plaintiff. Plaintiff is informed and believes that its customers are diverted from its Web site to the deceptively similar Web site of the Defendants. The Defendants' Web site is designed and presented such that it appears to be maintained by or affiliated with the Plaintiff.

14. The deceptive nature of the Defendants' Web site includes but is not limited to the following:

A. The Defendants' Web site is prominently titled with Plaintiff's name "Coachella Valley Water District." Plaintiff's name is prominently and repeatedly featured on the Web site. In the few places Defendants' "doxo" name appears, it is minimized, is in smaller font and not as prominent, and is not clearly identified as having any particular meaning. (Exhibit "A").

B. The Defendants' Web site states: "Pay your bill – Coachella Valley Water District" and has a box where the amount for payment of the customer's monthly Coachella Valley Water District bill can be entered. (Exhibit "A"). There is a link to a second Web page that states "Enter Your Coachella Valley Water District Bill Details." (Exhibit "B").

C. Defendants' Web site has a section "Coachella Valley Water District FAQ" which appears to be CVWD answering frequently asked questions about itself. (Exhibit "A").

D. Defendants' Web site has direct clickable links to CVWD's Web site that do not give attribution to Plaintiff and thus makes it appear that some of Plaintiff's Web pages are part of Defendants' Web site, as follows:

(1) A "$ Pay Bill" link that when clicked on goes to the Web page represented by Exhibit "B" hereto.

(2) An "Online Login" link that when clicked on goes to the Plaintiff's billing system login Web page. (Exhibit "C").

(3) A "Customer Service" link that when clicked on goes to one of Plaintiff's Web pages but is a broken link. (Exhibit "D"). The fact that the customer service Web page link is a broken link casts Plaintiff in an unfavorable light to its customers and the public.

(4) A "Website" link that when clicked upon goes to the CVWD homepage. (Exhibit "A").

E. The look and feel of Defendants' Web site is confusingly similar to Plaintiff's because, among other things, the Defendants use a similar color scheme and layout. Similar blue and grey colors are used, and the block formatting is similar.

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F. Similar complaints have been raised concerning the Defendants' activities, including one by the Southeast Colorado Power Association ("SECPA"). SECPA maintains a Web site that states in part:

> "Scam Alert!
>
> Alert: Unaffiliated bill payment service targeting SECPA members
>
> It has recently come to our attention that a company known as Doxo, Inc., which is not affiliated with Southeast Colorado Power Association, is using our contact information and reputation to market its online bill payment service to potential customers. SECPA is not in partnership with this company and have not authorized them to use our logo or materials. Furthermore, we do not require that members use Doxo's services to pay invoices.
>
> SECPA already offers secure online bill pay from our website, as well other payment options."

(Exhibit "E").

FIRST CAUSE OF ACTION

(Federal Trademark Infringement 15 U.S.C. § 1125)

15. Plaintiff incorporates each of the allegations contained in Paragraphs 1 through 14 hereinabove, as though fully set forth in this paragraph.

16. Plaintiff has been continuously using the name "Coachella Valley Water District" as a service mark in connection with providing water service to the public, including billing the public therefore, for nearly 100 years. The Plaintiff has common law trademark rights in its service mark and the exclusive right to use the service mark, excluding all others. Given its long and continuous use and extensive public exposure the "Coachella Valley Water District" service mark has acquired secondary meaning and further is a famous mark. The mark is unregistered.

17 Section 43(a) of the Lanham Act creates a federal cause of action for infringement of unregistered marks. 15 U.S.C. § 1125(a)(1)(A). The Lanham Act authorizes courts to grant injunctions thereunder. 15 U.S.C. § 1116(a).

18. Defendants, and each of them, have infringed, and continue to infringe the Plaintiff's service mark referenced hereinabove, in the manner referenced hereinabove.

19. Defendants' infringing activities are likely to cause confusion, mistake, or deception among consumers as to the source, quality, and nature of Defendants' services relative to Plaintiff. For example, Defendants use Plaintiff's service mark "Coachella Valley Water District" on Defendants' Web site providing a service for consumers to pay bills owing to Plaintiff. Plaintiff provides its own billing service on its own Web site for consumers to pay bills owing to Plaintiff. Defendants' prominent use of Plaintiff's service mark, use of direct links to Plaintiff's Web site that are not attributed, and the similar look and feel of the Web sites, make it look like Plaintiff's and Defendants' Web sites are unified or affiliated. Plaintiff is informed and believes that the Defendants are attempting to confuse consumers by creating the appearance that their Web site is Plaintiff's Web site, or that Defendants are endorsed by or affiliated with Plaintiff.

20. Defendants' continued use of Plaintiff's service mark has caused, and will continue to cause, irreparable harm and injury to the Plaintiff and its reputation and goodwill, for which the Plaintiff has no adequate remedy at law. The threat of future injury to the general public, and to the Plaintiff's business, identity, goodwill and reputation, necessitates the award of injunctive relief to prevent the Defendants' continued wrongful and false acts and/or the use and infringement of the Plaintiff's name and service mark.

21. Defendants are in violation of 15 U.S.C. § 1125(c) and Plaintiff is entitled to recovery of (1) Defendants' profits, (2) any damages sustained by the Plaintiff, and (3) the costs of the action, all according to proof. Plaintiff is informed

and believes that Defendants' infringement is intentional, willful, and/or deliberate, and this case should be declared an "exceptional case" pursuant to 15 U.S.C. § 1117, and that Defendants should be ordered to pay Plaintiff's attorney fees according to proof.

22. This Complaint is further notice to the Defendants of Plaintiff's ownership of the above referenced service mark, and rights, and is a notice and demand to Defendants to immediately cease and desist their unlawful activities. Plaintiff is informed and believes that Defendants continue to refuse to comply.

SECOND CLAIM FOR RELIEF

(Federal Trademark Dilution 15 U.S.C. § 1125)

23. Plaintiff repeats and realleges every allegation set forth in paragraphs 1 through 14, and 16 through 22 hereinabove, as though fully set forth in this paragraph.

24. Plaintiff's service mark is famous under the definition of 15 U.S.C. § 1125.

25. Defendants' use of the Plaintiff's service mark as alleged hereinabove began after Plaintiff's service mark became famous. Defendants' actions blur and tarnish the distinctive qualities of Plaintiff's famous mark. Plaintiff is informed and believes that Defendants have intentionally copied, and continue to copy, Plaintiff's mark and use it on Defendants' Web site providing a billing service nearly identical to that provided by Plaintiff to its customers. Defendants' actions impugn the Plaintiff's reputation for excellence symbolized by Plaintiff's mark. Plaintiff is deprived of its lawful right to control the reputation for excellence and high quality symbolized by its mark by Defendants' actions.

26. Plaintiff is informed and believes that Defendants' conduct is causing confusion and/or deception of the public that Defendants' service is in some way sponsored by, affiliated with, or approved by Plaintiff, when it is not. Plaintiff is

informed and believes that Defendants' actions have resulted in actual harm to the Plaintiff.

27. Plaintiff is informed and believes and thereon alleges that, as a direct and proximate result of Defendants' actions in misappropriating and diluting Plaintiff's mark, and the resulting advantage accruing to Defendants' business from Plaintiff's advertising, sales, and consumer recognition, and as a proximate result of confusion, deception, or mistake, caused thereby, that Defendants have made substantial profits, in an amount in excess of $10,000, and subject to proof.

28. Plaintiff is informed and believes and thereon alleges that, as a direct and proximate result of Defendants' actions in misappropriating and diluting Plaintiff's mark, and the resulting advantage accruing to Defendants' business from Plaintiff's advertising, sales, and consumer recognition, and as a proximate result of confusion, deception, or mistake, caused thereby, that Plaintiff has been deprived in some part of the value of its service mark, in an amount in excess of $10,000, and subject to proof.

29. Plaintiff is informed and believes, and thereon alleges that, unless restrained and enjoined by this Court, Defendants will continue to misappropriate and dilute Plaintiff's mark referenced hereinabove, in the manner alleged hereinabove, thus engendering a multiplicity of judicial proceedings, and pecuniary compensation is inadequate, and will not afford Plaintiff adequate relief for the ongoing damage to its mark and reputation in the public perception. The Court should further order that all infringing advertising materials shall be delivered up by Defendants and destroyed and/or remove from the Internet.

30. Plaintiff is informed and believes that Defendants' misappropriation and dilution of Plaintiff's mark is intentional, willful, and/or deliberate, and this case should be declared an "exceptional case" pursuant to 15 U.S.C. § 1117, and that Defendants should be ordered to pay Plaintiff's attorney fees and costs, according to proof.

THIRD CLAIM FOR RELIEF

(Federal Unfair Competition 15 U.S.C. § 1125)

31. Plaintiff repeats and realleges every allegation set forth in paragraphs 1 through 14, 16 through 22, and 24 through 30 hereinabove, as though fully set forth in this paragraph.

32. By the acts described hereinabove, Defendants have engaged in ongoing unlawful and unfair business practices, in violation of 15 U.S.C. § 1125.

33. As a direct and proximate cause of Defendants' unlawful and unfair business practices, Plaintiff is informed and believes it has suffered damages in excess of $10,000 and subject to proof at trial, and that Defendants have made substantial profits, in an amount in excess of $10,000, and subject to proof, which Plaintiff is entitled to recover.

34. Plaintiff is informed and believes, and thereon alleges that, unless restrained and enjoined by this Court, Defendants will continue to engage in unfair business practices as alleged hereinabove, thus engendering a multiplicity of judicial proceedings, and pecuniary compensation is inadequate, and will not afford Plaintiff adequate relief for the ongoing damage. The Court should further order that all advertising and other materials used in connection with the herein alleged unfair competition shall be delivered up by Defendants and destroyed and/or removed from the Internet.

35. Plaintiff is informed and believes that Defendants' unfair competition is intentional, willful, and/or deliberate, and this case should be declared an "exceptional case" pursuant to 15 U.S.C. § 1117, and that Defendants be ordered to pay Plaintiff's attorney fees and costs, according to proof.

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FOURTH CLAIM FOR RELIEF

(Common Law Unfair Competition)

36. Plaintiff repeats and realleges every allegation set forth in paragraphs 1 through 14, 16 through 22, 24 through 30, and 32 through 35 hereinabove, as though fully set forth in this paragraph.

37. By the acts described hereinabove, Defendants have engaged in ongoing unfair competition by trademark infringement, in violation of common law. This includes Defendants' implying a governmental connection likely to mislead the public. By analogy Cal. Bus & Prof. Code § 17533.6 states:

> it is unlawful for any person, firm, corporation, or association that is a nongovernmental entity to use a seal, emblem, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government . . . connection, approval, or endorsement of any product or service, including, but not limited to, any financial product, goods, or services, by any means, including, but not limited to, a mailing, electronic message, Internet Web site . . .

38. Plaintiff is informed and believes that the Defendants' above alleged unfair competition is likely to cause confusion, mistake, or deception among consumers as to the source, quality, and nature of Defendants' goods, and is likely to lead to consumer confusion with the Plaintiff and its services. Plaintiff has not given permission to Defendants to engage in the above referenced activities, and, is not connected with and does not approve the activities and services of the Defendants.

39. Plaintiff is informed and believes and thereon alleges that, as a direct and proximate result of the advantage accruing to Defendants' business from Plaintiff's advertising, sales, and consumer recognition, and as a proximate result of confusion, deception, or mistake, caused by Defendants' wrongful advertising and

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sales of its services by the aforesaid acts of unfair competition, that Defendants have made substantial profits, in an amount in excess of $10,000, and subject to proof.

40. Plaintiff is informed and believes and thereon alleges that, as a direct and proximate result of the advantage accruing to Defendants' business from Plaintiff's advertising, sales, and consumer recognition, and as a proximate result of confusion, deception, or mistake, caused by Defendants' wrongful advertising and sales of its services by the aforesaid acts of unfair competition that Plaintiff has been deprived in some part of the value of its service mark as commercial asset, all in an amount believed to be in excess of $10,000, and subject to proof.

41. Plaintiff is informed and believes, and thereon alleges that, unless restrained and enjoined by the court that Defendants will continue to infringe upon Plaintiff's service mark and continue to engage in the aforesaid unfair competition in the manner alleged hereinabove, thus engendering a multiplicity of judicial proceedings, and pecuniary compensation is inadequate, and will not afford Plaintiff adequate relief for the ongoing damage to its service mark in the public perception. The court should further order that all infringing advertising materials shall be delivered up by Defendants and destroyed and/or removed from the Internet.

REQUESTED RELIEF

WHEREFORE, Plaintiff CVWD prays for judgment against Defendants and each of them, jointly and severally:

A. That Defendants and their owners, officers, agents, servants, employees, attorneys, parents, subsidiaries, affiliates, successors, and all others in active concert or participation with them or acting on their behalf, be preliminarily and permanently enjoined from selling, advertising, or in any way providing services that use of the service mark of Plaintiff as set forth hereinabove in the name of "Coachella Valley Water District"; that they be enjoined from further infringement of said service mark; that they be preliminarily and permanently enjoined from passing off, or assisting in passing off Defendants' services goods as those of the Plaintiff; and otherwise prohibited from pursuing or assisting with any and all acts of unfair competition service mark infringement, as alleged in this Complaint, including being enjoined from making any futher use of the Web pages https://www.doxo.com/info/coachella-valley-water-dist , and https://pay.doxo.com/enroll/payer_requests/new?login_session_id=4458907&login_session_key_value=28eeffb021dcc33f36b8 , and any other websites using the name "Coachella Valley Water District" or any colorable variation thereof, or offering any bill paying service for Plaintiff.

B. That the court order that Defendants be required to:

1. Provide Plaintiff with a complete list of all transactions using Plaintiff's service mark, and account to Plaintiff as trustee ex maleficio for all income and sales, and all profits derived therefrom by the Defendants;

2. Provide Plaintiff with a complete list of all colorable use of Plaintiff's service mark, including all Web sites, all advertising ,and all mailings, etc.;

3. Use their best efforts to recall from trade any and all infringing uses of Plaintiff's service mark, and deliver up to Plaintiff for destruction all literature, advertising, and other materials of an infringing, false, misleading, or unfair nature, as well as remove Defendants' Web site from the Internet.

4. File with this court and serve on Plaintiff a report in writing within three months from the date of judgment, under oath, setting forth in detail the manner and form in which Defendants have complied with the terms of any injunction entered by this court.

C. That Defendants be ordered to account for and disgorge and pay to Plaintiff all profits derived by Defendants from their aforesaid acts, including acts of infringement, dilution, and unfair competition, in an amount in excess of $10,000 and according to proof;

D. That Defendants be ordered to pay damages resulting to Plaintiff by the above alleged activities of infringement, dilution, and unfair competition, in an amount in excess of $10,000 and according to proof;

E. That this case be declared an "exceptional case' pursuant to 15 U.S.C. § 1117, given Defendants' willful and deliberate infringement and unfair competition, and that Defendants be ordered to pay Plaintiff's attorney fees and costs, according to proof, but in excess of $5,000 at the time of filing the Complaint;

G. That Plaintiff be awarded pre and post judgment interest as and where authorized by law; and

H. That Plaintiff be granted such other and further relief, Including injunctive relief, where and as the case may require, and the court may deem just and proper.

Dated: March 21, 2017

BEST BEST & KRIEGER LLP

By: ____________________
G. HENRY WELLES
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COACHELLA VALLEY WATER DISTRICT